

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CLYDE DALE EVANS,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO.4:13-CV-375-Y
	§	
CLAUDE MAYE, Warden	§	
USP Leavenworth, and	§	
GREG ABBOTT, Attorney General	§	
State of Texas,	§	
Respondents	§	

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS
AND ORDER DENYING CERTIFICATE OF APPEALABILITY

In this action brought by petitioner Clyde Dale Evans under 28 U.S.C. § 2254, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on August 30, 2013; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on September 16, 2013.

The Court, after **de novo** review, concludes that Petitioner's objections must be overruled, and that the petition for writ of habeas corpus should be dismissed with prejudice as time-barred under 28 U.S.C. § 2244, for the reasons stated in the magistrate judge's findings and conclusions, and for the additional reasons stated in the preliminary response at pages 5-8.

Therefore, the findings, conclusions, and recommendation of the magistrate judge are ADOPTED.

Petitioner Clyde Dale Evans's petition for writ of habeas corpus under 28 U.S.C. § 2254 is DISMISSED WITH PREJUDICE.

Certificate of Appealability

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is

issued under 28 U.S.C. § 2253.¹ Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."² The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."³ A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further."⁴

Upon review and consideration of the record in the above-referenced case as to whether petitioner Evans has made a showing that reasonable jurists would question this Court's rulings, the Court determines he has not and that a certificate of appealability should not issue for the reasons stated in the August 30, 2013 Findings, Conclusions, and Recommendation of the United States Magistrate Judge, and for the reasons stated herein.⁵

Therefore, a certificate of appealability should not issue.

SIGNED September 24, 2013.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

¹See Fed. R. App. P. 22(b).

²RULES GOVERNING SECTION 2254 PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS, RULE 11(a) (December 1, 2009).

³28 U.S.C.A. § 2253(c)(2)(West 2006).

⁴*Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003)(citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

⁵See Fed. R. App. P. 22(b); see also 28 U.S.C.A. § 2253(c)(2)(West 2006).